

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CRAIG CARROLL,

Plaintiff,

V.

SCOTT, et al.,

Defendants.

Case No. 1:20-cv-00086-EPG (PC)

FINDINGS AND RECOMMENDATIONS, RECOMMENDING THAT THIS CASE BE DISMISSED, WITHOUT PREJUDICE, BECAUSE OF PLAINTIFF'S FAILURE TO COMPLY WITH A COURT ORDER AND TO PROSECUTE THIS CASE

(ECF No. 15)

ORDER DIRECTING CLERK TO ASSIGN
DISTRICT JUDGE

Craig Carroll (“Plaintiff”) is a federal prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action.

On July 21, 2020, the Court screened Plaintiff's Second Amended Complaint and found that it stated a cognizable claim. (ECF No. 15). The Court gave Plaintiff thirty days from the date of service of the order to either: "a. Notify the Court in writing that he wants to proceed only on his Bivens claim for excessive force in violation of the Eighth Amendment against Defendants Lt. Scott, Officer Holmes, and Doe Officers; b. File a Third Amended Complaint; or c. Notify the Court in writing that he wants to stand on his Second Amended Complaint, subject to the Court issuing findings and recommendations to a district judge consistent with this order." (Id. at 16). Plaintiff was warned that, "[i]f Plaintiff fails to comply with this order, the undersigned may recommend dismissal of the case for failure to comply with a court order

1 and failure to prosecute.” (Id. at 17).

2 The thirty-day period Plaintiff had to respond to the screening order has expired, and
3 Plaintiff has not responded to the screening order. Accordingly, the Court will recommend that
4 this case be dismissed, without prejudice, for failure to comply with a court order and failure to
5 prosecute.

6 “In determining whether to dismiss a[n] [action] for failure to prosecute or failure to
7 comply with a court order, the Court must weigh the following factors: (1) the public’s interest
8 in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of
9 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the
10 public policy favoring disposition of cases on their merits.” Pagtalunan v. Galaza, 291 F.3d
11 639, 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

12 ““The public’s interest in expeditious resolution of litigation always favors dismissal.””
13 Id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)). Accordingly,
14 this factor weighs in favor of dismissal.

15 As to the Court’s need to manage its docket, “[t]he trial judge is in the best position to
16 determine whether the delay in a particular case interferes with docket management and the
17 public interest.... It is incumbent upon the Court to manage its docket without being subject to
18 routine noncompliance of litigants....” Pagtalunan, 291 at 639. Plaintiff has failed to respond
19 to the Court’s screening order. This failure to respond is delaying the case and interfering with
20 docket management. Therefore, the second factor weighs in favor of dismissal.

21 Turning to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial in
22 and of itself to warrant dismissal.” Id. at 642 (citing Yourish, 191 F.3d at 991). However,
23 “delay inherently increases the risk that witnesses’ memories will fade and evidence will
24 become stale,” id. at 643, and it is Plaintiff’s failure to comply with a court order and to
25 prosecute this case that is causing delay. Therefore, the third factor weighs in favor of
26 dismissal.

27 As for the availability of lesser sanctions, at this stage in the proceedings there is little
28 available to the Court which would constitute a satisfactory lesser sanction while protecting the

1 Court from further unnecessary expenditure of its scarce resources. Considering Plaintiff's
2 incarceration and *in forma pauperis* status, it appears that monetary sanctions are of little use.
3 And, given the stage of these proceedings, the preclusion of evidence or witnesses is not
4 available. Additionally, because the dismissal being considered in this case is without
5 prejudice, the Court is stopping short of using the harshest possible sanction of dismissal with
6 prejudice.

7 Finally, because public policy favors disposition on the merits, this factor weighs
8 against dismissal. Id.

9 After weighing the factors, the Court finds that dismissal without prejudice is
10 appropriate. Accordingly, the Court HEREBY RECOMMENDS that:

11 1. This case be dismissed, without prejudice, because of Plaintiff's failure to
12 comply with a court order and to prosecute this case; and
13 2. The Clerk of Court be directed to close this case.

14 These findings and recommendations will be submitted to the United States district
15 judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
16 fourteen (14) days after being served with these findings and recommendations, Plaintiff may
17 file written objections with the Court.¹ The document should be captioned "Objections to
18 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
19 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.
20 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394
21 (9th Cir. 1991)).

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27 ¹ If, instead of or in addition to objecting, Plaintiff responds to the screening order and adequately
28 explains why he failed to timely respond to the screening order, the Court will vacate these findings and
recommendations.

1 Additionally, IT IS ORDERED that the Clerk of Court is directed to assign a district
2 judge to this case.

3 IT IS SO ORDERED.
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5 Dated: September 18, 2020

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10 UNITED STATES MAGISTRATE JUDGE